Supreme Court, U.S.
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Supreme Court of the United States

LASALLE GROUP INCORPORATED,
Petitioner,

v.

TRUSTEES OF THE DETROIT CARPENTERS FRINGE BENEFIT FUNDS,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Sixth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Does the alter ego doctrine prohibit a finding that prior employer LaSalle Group, Inc., a non-union construction company that properly terminated a collective bargaining agreement negotiated under §8(f) of the National Labor Relations Act, 29 U.S.C. 158(f), can be held to all the provisions of subsequent employer Industrial Contracting, LLC's collective bargaining agreement executed after LaSalle terminated, absent evidence that nonunion LaSalle was a disguised continuance of union Industrial?

PARTIES TO PROCEEDING AND CORPORATE DISCLOSURE STATEMENT

The parties to the proceedings are set forth in the case caption. Petitioner, LaSalle Group, Inc., states that it is a privately held corporation. No publicly held company owns 10% or more of LaSalle's stock. *See* Rule 29.6.

Respondents, Trustees of the Detroit Carpenters Fringe Benefit Funds, were plaintiffs-appellants/cross-appellees below. Industrial Contracting, L.L.C., which was a defendant in the district court and an appellee/cross-appellant below, is not a party to this appeal.

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The opinion of the United States Court of Appeals for the Sixth Circuit is reproduced at App. 1a. The Sixth Circuit's order denying the petition for rehearing and for rehearing en banc is reproduced at App 33a. The opinion of the United States District Court for the Eastern District of Michigan is reproduced at App. 24a.

JURISDICTIONAL STATEMENT

The United States Court of Appeals for the Sixth Circuit issued its order denying the Petitioner's rehearing petition on November 12, 2009. The Petitioner timely filed this petition and invokes this Court's jurisdiction under 28 U.S.C. §1254(1)(1988).

RELEVANT STATUTORY PROVISIONS INVOLVED

29 U.S.C. §158(f) (1974) (reproduced at App. 35a)

29 U.S.C. §159(a) (1959) (reproduced at App. 36a)

29 U.S.C. §186 (1995) (reproduced at App. 37a)

STATEMENT OF THE CASE

Petitioner LaSalle Group, Inc. ("LaSalle") is a general contractor that was incorporated in 1990. App. 4a. LaSalle entered into a collective bargaining agreement ("CBA") pursuant to §8(f) of the National Labor Relations Act, 29 U.S.C. 158(f), with the Michigan Regional Council of Carpenters ("MRCC" or "Union"). LaSalle subsequently provided its notice of

termination of the CBA on February 27, 2003. RE.37-3:p.1; RE.42-11:p.6; RE.42-21:p.5. LaSalle lawfully terminated this CBA effective May 31, 2003. App. 25a. LaSalle had no obligation to pay fringe benefits to the Funds after May 31, 2003. Once LaSalle terminated its CBA, it laid off all its union carpenters.

On August 21, 2001, Industrial Contracting, L.L.C. ("Industrial"), was incorporated. App. 25a. On June 1, 2003, Industrial entered into a CBA with the Union. App. 25a. Industrial then hired most of LaSalle's laid off carpenters. Carpentry subcontractor Industrial has never been a general (or primary) contractor. RE.42-21:p.22. Industrial's CBA is still in effect. App. 25a.

As a general contractor, LaSalle did not have any carpenters on its payroll after it terminated its CBA. RE.42-11:p.5 of 13. Instead, it hired nonunion carpentry subcontractors to perform carpentry work on projects. RE.42-11:p.4 of 13. Those nonunion companies necessarily had nonunion carpenters as employees. It is these nonunion employees of LaSalle's nonunion carpentry subcontractors for whom the Funds are seeking fringe benefit payments. App. 26a.

After LaSalle properly terminated its CBA and Industrial became a signatory, the Funds audited both LaSalle and Industrial to determine whether they properly paid all the fringe benefits required under their respective CBAs. RE.43-33:p.4. These audits confirmed that (1) LaSalle paid all required fringe benefit contributions while it was a signatory to the CBA, and (2) since becoming a signatory, Industrial also paid all required fringe benefit contributions. RE.37-7:p.1; RE.37-8:p.1; RE.37-9:p.2; RE.37-10:p.2; RE.43-33:pp.9-10. The Funds do not claim that LaSalle

owes fringe benefits for any of LaSalle's employees. App. 26a. The Funds also do not claim that LaSalle violated the subcontracting provision of the CBA that it properly terminated. Instead, the Funds claim that LaSalle is bound to Industrial's CBA and that LaSalle must therefore pay the Funds fringe benefits for nonunion LaSalle's subcontractors' nonunion employees. App. 26a.

REASONS FOR GRANTING THE PETITION

I. The Circuits do not assess alter ego under the "disguised continuance" test set forth by this Court in *Southport Petroleum* and *Howard Johnson*.

It is well-settled that an employer can avoid a union contract by shutting down its operations entirely. *Textile Workers Union v. Darlington Mfg. Co.*, 380 U.S. 263, 273-4 (1965). The alter ego doctrine was developed to prevent employers from evading collective bargaining agreements and labor law obligations by making "a mere technical change in the structure or identity of the employing entity ... without any substantial change in its ownership or management." *Howard Johnson Co. v. Detroit Local Joint Exec. Bd.*, 417 U.S. 249, 259 n. 5 (1974). This Court first considered an alter ego case in *Southport Petroleum Co. v. NLRB*, 315 U.S. 100 (1942), where an employer sought dismissal of an NLRB order to reinstate union employees because the employer had sold its assets to a second company. The Court found that the NLRB needed to adduce whether there was a "bona fide discontinuance and a true change in ownership – which would terminate the duty of reinstatement created by the Board's order – or merely

a disguised continuance of the old employer." *Id.* at 106. Such a "disguise" was defined as "a disguise intended to evade" the Board's order. *Id.*

In *Textile Workers Union v. Lincoln Mills,* 353 U.S. 448 (1957), this Court held that §301 of the LMRA authorized the federal courts to develop a federal common law regarding enforcement of CBAs. But seventeen years later, it cautioned:

> *Lincoln Mills* did not envision any freewheeling inquiry into what the federal courts might find to be the most desirable rule, irrespective of congressional pronouncements. Rather, *Lincoln Mills* makes clear that this federal common law must be "fashion(ed) from the policy of our national labor laws."

Howard Johnson, 417 U.S. at 254 (quoting *Lincoln Mills,* 353 U.S. at 456). The Court outlined the major policy of the labor laws in *John Wiley & Sons v. Livingston,* 376 U.S. 543, 549 (1964): "the need to afford some protection to the interests of the employees during a change of corporate ownership."

The union employees' interests were fully served here before LaSalle was declared to be Industrial's alter ego. LaSalle laid off its union carpentry employees on May 31, 2003, when its NLRA §8(f) union contract properly terminated, and Industrial hired many of those same union carpenters after it signed its own §8(f) CBA on June 1, 2003. No one disputed that LaSalle was entitled to terminate its contract. If Industrial had not signed a CBA, it would not have hired the laid-off carpenters, and the pension fund would be worse off. LaSalle certainly is not a

"disguised continuance" of Industrial; instead, it is merely a prior employer of union carpenters that properly terminated its CBA and laid off its carpenters. Declaring LaSalle to be Industrial's alter ego was improper.

Courts have declined to find that a prior employer that properly terminates its union contract is the alter ego of the union company that hires much of its workforce and agrees to be bound to a CBA. *Cement Masons' Pension Trust Fund-Detroit & Vicinity v. O'Reilly,* 664 F. Supp. 277 (E.D. Mich. 1987) (noting that no case was cited where liability was imposed upon a predecessor under an alter ego theory for a successor's labor obligations). *See also Sheet Metal Workers Int'l Ass'n Local Union No. 67 v. Todd-Ford Mgt. Co.*, No. SA-CA-290-XR, 2006 WL 1044240 (W.D. Tex. Mar. 9, 2006) (court refused to find that prior employer, which properly terminated its labor contract, was subsequent employer's alter ego).

There is no reason to seek alter ego status of a prior employer for an on-going business entity's labor obligations. In denying that a nonunion corporation was merely a "disguised continuance" of two union corporations, this Court found significant in *Howard Johnson* the fact that the union corporations continued as viable entities with substantial retained assets sufficient to permit the union to "have a realistic remedy to enforce their contractual obligations." *Howard Johnson,* 417 U.S. at 257. In the instant matter, Industrial is an on-going business employing a number of union carpenters on union jobs for which it pays union fringe benefits. It has not subcontracted work to LaSalle. If the Funds have any viable claims against union signatory Industrial, they can sue

Industrial for breach of contract. But in fact the Funds have overreached, claiming entitlement to union fringe benefits for nonunion LaSalle's nonunion carpentry subcontractors' nonunion employees. The alter ego doctrine was not intended to permit such a perversion of the labor law, which will not benefit any employee (union or nonunion), but instead will simply fill the coffers of the Funds with money they are not entitled to and money which by law they can neither hold onto nor pay out to nonunion carpenters.[1]

Thus, under the reasoning of this Court's decisions in *Southport* and *Howard Johnson*, the alter ego doctrine was meant to apply when a successor corporation is set up to evade a predecessor's labor and collective bargaining agreement obligations. These two decisions require a transfer of assets or ownership from a union company with an existing labor obligation to a nonunion company with no such obligation in order for the union company to unlawfully evade its labor obligation. The point is to protect the rights of the workers. Therefore, if the first company has no labor obligations (i.e., it is nonunion), no "successor" can be held liable for any evasion, as nothing could be evaded. Thus, the "disguised continuance" test necessarily requires first that an obligation exist under the labor laws, and second that the obligation be evaded illegally. No court would hold two nonunion companies that never had any labor obligations to be alter egos for purposes of the national

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[1] Under the Labor-Management Relations Act, 29 U.S.C. §186 (1995), and *Walsh v. Schlecht*, 429 U.S. 401 (1977), the Funds are prohibited from collecting fringe benefit payments on behalf of or for the benefit of unrepresented nonunion employees of nonunion subcontractors of nonunion LaSalle Group, Inc.

labor laws. If nothing is unlawfully evaded, no successor could be responsible under an alter ego theory.

Since these two decisions, however, federal courts around the country have developed a number of different ways to analyze whether in fact a nonunion entity is the "alter ego" of a union entity. At present, most courts disregard the definition that this Court set forth in 1942 that an improper transaction is "a disguise intended to evade" labor obligations, claiming that this Court did not really mean precisely what it said. As a result, the Circuits are all over the board as to whether a pension fund can establish alter ego liability absent proof of (1) unlawful evasion of existing union obligations, or (2) the fund or union's loss of the full benefit of the labor agreement it negotiated. Indeed, in the case at issue here, the Sixth Circuit found the *prior* employer responsible for the collective bargaining agreement of the *successor* employer.

Many circuits start with the NLRB's seven-factor alter ego test that analyzes "whether the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision and ownership." *Goodman Piping Prods., Inc. v. NLRB,* 741 F.2d 10, 11 (2d Cir. 1984); *Trafford Distrib. Ctr. v. NLRB,* 478 F.3d 172, 176 (3rd Cir.), *cert. denied,* 552 U.S. 818 (2007) (considers "equipment and premises" as one prong); *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.,* 690 F.2d 489, 507 (5th Cir. 1982), *cert. denied,* 464 U.S. 932 (1983); *NLRB v. Allcoast Transfer, Inc.,* 780 F.2d 576, 579 (6th Cir. 1986); *Iowa Express Distrib., Inc. v. NLRB,* 739 F.2d 1305, 1310 (8th Cir.), *cert. denied,* 469 U.S. 1088 (1984); *Board of Trustees v. Universal Enters., Inc.,* 751

F.2d 1177, 1184 (11th Cir. 1985); and *Fugazy Continental Corp. v. NLRB,* 725 F.2d 1416, 1419 (D.C. Cir. 1984). However, the NLRB developed its alter ego test to evaluate who is an "employer" for purposes of NLRA unfair labor practice claims. *Stardyne, Inc. v. NLRB,* 41 F.3d 141, 147-8 (3d Cir. 1994). Even the NLRB does not require a successor employer to assume a predecessor's CBA, as courts routinely do in pension fund collection actions that allege alter ego. *NLRB v. Burns Int'l Sec. Servs.,* 406 U.S. 272, 281-4 (1972). As shown below, the Circuits using the NLRB's test end up with inconsistent alter ego findings to those that would be obtained concerning the same two employers in an unfair labor practice claim before the NLRB.

The Circuits that use the NLRB test as a proxy for determining alter ego in pension fund cases do not distinguish between the reasoning set forth in suits brought concerning NLRB alter ego findings and pension fund lawsuits seeking fringe benefits. *See Stardyne v. NLRB,* 41 F.3d 141, 147 n. 4 (3d Cir. 1994) (outlining various approaches to alter ego). These courts ignore this Court's holding that the test they are to use is to determine whether there has been a disguised continuance or an improper transfer resulting in unlawful evasion of a valid CBA. Instead, the courts blindly determine alter ego status based on whether some factors were met, but forget that their goal is to determine whether there was a disguised continuance or unlawful evasion. As a result, absurd outcomes such as the instant case occur, where a court's mechanical application of the NLRB test results in a finding that a prior employer that properly terminated its CBA is an alter ego bound to a successor employer's CBA.

A. Many Circuits use variations of the NLRB's seven-factor alter ego test.

The NLRB first enunciated the seven-factor alter ego doctrine in *Crawford Door Sales Co.*, 226 NLRB 1144 (1976). This doctrine was established for cases originating before the NLRB pursuant to its agency power to administer a congressionally created program. *See Chevron, USA, Inc. v. Natural Res. Def. Council,* 467 U.S. 837, 843-44 (1984). In assessing the question of alter ego, courts in several Circuits routinely follow the NLRB's alter ego standard, ignoring the distinction between NLRB enforcement actions and pension fund collection lawsuits seeking fringe benefits under a CBA. This distinction is important. The NLRB does not consider whether one entity is liable for pension fund contributions under a CBA signed by another entity; indeed, while it may find that a successor company has a duty to arbitrate labor disputes, the NLRB never imposes upon the alter ego the identical contract that only the predecessor executed. *Burns Int'l Sec. Servs.*, 406 U.S. at 281-4.

The NLRB alter ego standard for determining whether two entities should be considered one for purposes of unfair labor practices or the duty to arbitrate with a union has little correlation with the Circuits' alter ego standard for determining whether a pension fund can collect fringe benefits for nonunion workers of a nonunion entity that has ties to a union entity. Courts in pension fund lawsuits are not required to follow the NLRB's alter ego test, nor should they. Because the current seven-factor test used in many Circuits never actually analyzes the "disguised continuance" requirement set forth by this Court in *Howard Johnson Co. v. Detroit Local Joint*

Exec. Bd., 417 U.S. 249, 259 n. 5 (1974), it should be rejected and a better, more predictable test for alter ego liability should be set forth by this Court.

This issue is distinct from this Court's admonition in *Howard Johnson* that it would be improper to have separate substantive law applicable in the NLRB and the courts when unions pursue employers for unfair labor practices. *Howard Johnson,* 417 U.S. at 256. Pension funds seek collection of unpaid fringe benefits from alleged alter egos in federal court, not through arbitration before the NLRB. *See Schneider Moving & Storage Co. v. Robbins,* 466 U.S. 364 (1984). Even the NLRB is prohibited from declaring a successor corporation to be bound to a CBA negotiated by its predecessor, even if the two entities are found to be alter egos. *Burns Int'l Sec. Servs.*, 406 U.S. at 281-4. Pension funds should not be permitted to impose more stringent penalties in retrospect on work already performed in order to recover fringe benefits.

Several circuits that use the seven-factor test then require something more before declaring a nonunion entity to be the alter ego of a union entity. The major division among these Circuits is that some require proof that labor obligations were unlawfully evaded or that the union got less than it bargained for before imposing alter ego liability. Others require proof of intent to evade labor obligations. Proof that obligations were unlawfully evaded should be the critical inquiry before imposing the equitable alter ego doctrine, which would ensure that pension funds and unions obtain all benefits from CBAs to which they are entitled.

The Second Circuit follows the seven-factor test, recognizing that the test is flexible. *Goodman Piping Prods., Inc. v. NLRB,* 741 F.2d 10, 11 (2d Cir. 1984). Proof of intent to evade union obligations or anti-union animus is not required. *Id.* at 12. The Third Circuit also starts with the seven-factor test and considers "intent to evade" as an additional factor to consider. *Stardyne v. NLRB,* 41 F.3d 141 (3d Cir. 1994). However, as in the Second Circuit, a lack of intent to evade does not preclude an alter ego finding. *Id. See also Trafford Distrib. Ctr. v. NLRB,* 478 F.3d 172 (3d Cir. 2007).

The Fifth Circuit uses the seven-factor test and considers the focus of the alter ego doctrine to be on the "disguised continuance or an attempt to avoid the obligations of a collective bargaining agreement through a sham transaction or technical change in operations." *Carpenters Local Union No. 1846 v. Pratt-Farnsworth, Inc.,* 690 F.2d 489, 508 (5th Cir. 1982). However, lower courts in the Fifth Circuit interpret *Pratt-Farnsworth* not as written, but as a holding that "the motive factor, though not controlling, must be given substantial weight in the alter ego determination." *Sheet Metal Workers Int'l Ass'n Local Union No. 67 v. Todd-Ford Mgt. Co.,* No. SA-03-CA-290-XR, 2006 WL 1044240, at *2 (W.D. Tex. Mar. 9, 2006). The *Todd-Ford* court found that unlawful motive is an eighth factor. *Id.* at *15.

The Eighth Circuit starts with the seven-factor test and then requires an inquiry into unlawful motive or intent to avoid a labor contract. *Iowa Express Distrib., Inc. v. NLRB,* 739 F.2d 1305, 1310-11 (8th Cir. 1984); *Crest Tankers, Inc. v. National Maritime Union,* 796 F.2d 234, 237 (8th Cir. 1986). The

Eleventh Circuit simply uses the NLRB's seven-factor test to assess alter ego. *Board of Trustees v. Universal Enters., Inc.*, 751 F.2d 1177 (11th Cir. 1985).

In *Fugazy Continental Corp. v. NLRB*, 725 F.2d 1416, 1419 (D.C. Cir. 1984), the D.C. Circuit used the seven-factor test to uphold an NLRB alter ego decision and noted that the Board gives substantial weight to evidence that the motive for the transaction was to evade duties under the labor laws. In that case, the employer undertook a "ferocious anti-union campaign" to prevent employees from voting for the Union. But in *Flynn v. R.C. Tile*, 353 F.3d 953, 958 (D.C. Cir. 2004), the court only considered similarities in ownership, management, business purpose, operations, equipment and customers, noting that no single factor was controlling and all were not required to find alter ego liability. It further held that the absence of anti-union animus did not establish that the two entities were not alter egos. *Id.* at 960. Two years later, a D.C. district court refused to find alter ego liability absent evidence of inequity, holding that a nonunion company is not an alter ego of a union company "when its unionized counterpart discloses the relationship between the two entities prior to entering into a collective bargaining agreement with the union and the union receives the full benefit of that agreement." *Flynn v. Interior Finishes, Inc.*, 425 F. Supp. 2d 38, 54 (D.D.C. 2006).

B. Other Circuits have developed their own tests for alter ego.

Courts in the First, Fourth, Seventh and Ninth Circuits do not use the NLRB rule. However, they also struggle with adherence to the "disguised continuance"

rule. Because the Circuits are largely ignoring this Court's "disguised continuance" test, LaSalle's Petition for Writ of Certiorari should be granted so that this Court can rein in the Circuits and provide the uniformity that is so lacking in this important area of federal labor law.

1. The First Circuit limits alter ego to cases where equity requires it.

In the First Circuit, proof of illicit intent to avoid labor obligations is a "critical inquiry" in some alter ego cases, *see Penntech Papers, Inc. v. NLRB*, 706 F.2d 18, 24 (1st Cir.), *cert. denied*, 464 U.S. 892 (1983), but is merely another factor to consider on other cases (*see Massachusetts Carpenters Central Coll. Agency v. Belmont Concrete Corp.*, 139 F.3d 304, 309 (1st Cir. 1998) (anti-union animus is not essential to sustain a finding of alter ego). So sometimes the First Circuit requires proof of unlawful motive, union animus or intent to evade, *C.E.K. Indus. Mech. Contractors, Inc. v. NLRB*, 921 F.2d 350, 355 (1st Cir. 1990), and sometimes it does not, *NLRB v. Hospital San Rafael, Inc.*, 42 F.3d 45 (1st Cir. 1994), *cert. denied*, 516 U.S. 927 (1995). However, it limits the alter ego doctrine to those cases where equity needs to be performed, such as where the corporate shield would prevent a party from receiving what is otherwise due to it from those who created the shield. *Massachusetts Carpenters Cent. Coll. Agency v. A.A. Bldg. Erectors, Inc.*, 343 F.3d 18, 21-22 (1st Cir. 2003). The First Circuit denies recovery to pension funds when no corporate change causes the union to be in a worse position than it was prior to the change. *Id.* at 22.

2. The Fourth Circuit considers the "reasonably foreseeable benefit" resulting from the transaction.

The Fourth Circuit takes an approach directly from this Court's pronouncements. It uses a "reasonably foreseeable benefit" standard, which focuses on "whether the transfer resulted in an expected or reasonably foreseeable benefit to the old employer related to the elimination of its labor obligations." *Alkire v. NLRB,* 716 F.2d 1014, 1019-20 (4th Cir. 1983). The Fourth Circuit derived its test directly from this Court's holding in *Textile Workers v. Darlington Mfg. Co.,* 380 U.S. 263 (1965), explaining that the *Darlington* Court's distinction between the complete closing of a business (which is permissible under the labor laws) and a partial closing (in which the employer remains a viable entity elsewhere) was "the potential for a reasonably expected benefit resulting from the impact of the closing on the employer's remaining labor situation." *Alkire,* 716 F.2d at 1020. Alter ego will be found if "the employer obtains an economic benefit at the expense of statutory employee rights." *Id.* at 1021. Imposition of alter ego status is not dependent upon proof of intent to evade the labor laws, although proof of such an intent will usually establish that the transfer resulted in a reasonably foreseeable benefit to the old employer related to the elimination of its labor obligations. *NLRB v. McAllister Bros., Inc.,* 819 F.2d 439, 445 n. 14 (4th Cir. 1987).

3. The Seventh and Ninth Circuits require proof of unlawful evasion of labor obligations.

The Seventh Circuit takes a reasoned approach that requires proof of unlawful evasion before assessing alter ego liability. In *Trustees of the Pension, Welfare & Vacation Fringe Benefit Funds v. Favia Elec. Co.*, 995 F.2d 785 (7th Cir. 1993), the Seventh Circuit explained that the alter ego doctrine requires an examination of (1) interrelation of operations, (2) common management, (3) centralized control of labor relations, and (4) common ownership, plus a finding that (5) the second company is a "disguised continuance" of the union employer, resulting in evasion of the employer's labor obligations. *Id.* at 788. Although the first four elements are not required in all cases, proof of unlawful motive or intent is critical in the Seventh Circuit. *Id.* at 787.

Courts in the Ninth Circuit begin with a four factor test and evaluate whether two firms have (1) centralized control of labor relations, (2) common management, (3) interrelation of operations, and (4) common ownership and financial control," *J.M. Tanaka Constr., Inc. v. NLRB*, 675 F.2d 1029, 1033 (9th Cir. 1982), and then evaluate whether the nonunion entity was being used "in a sham effort to avoid collective bargaining obligations ... rather than for the pursuit of legitimate business objectives untainted by 'union animus.'" *UA Local 343 v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465, 1470 (9th Cir.), *cert. denied*, 516 U.S. 912 (1995) (citations omitted).

Absent evidence that a sham transaction or technical change in operations was an attempt to avoid

the union company's labor obligations, or that management later used the nonunion company to avoid the union company's obligations by deliberately shifting all of the union signatory's work to the non-signatory, alter ego liability will not be assessed. *Operating Engs. Pension Trust v. Petelski,* 247 Fed. Appx. 862, 864 (9th Cir. 2007).

4. The Tenth Circuit has no hard and fast alter ego rule.

The Tenth Circuit has declared that there is no hard and fast rule for determining whether a second employer is a prior employer's alter ego. *NLRB v. Tricor Prods., Inc.,* 636 F.2d 266, 270 (10th Cir. 1980). In that case, the Tenth Circuit did not set forth a test, but instead agreed with the NLRB's alter ego finding based on anti-union sentiment, continuity of the workforce, relationship between the management of the old and new companies, continuity of equipment and location, the new company's retention of accounts and customers, changes in the type and amount of work performed, and the new company's assumption of the old company's liabilities. *Id.* at 270.

While each Circuit has different alter ego standards and tests and none follows this Court's rulings, they have one thing in common. Applied properly, none of these Circuits would find a predecessor employer responsible for a successor employer's CBA. Each Circuit's focus is in determining whether the nonunion successor is the alter ego of a union predecessor. Other than the Sixth Circuit below, no case could be found where a prior employer was found to be an alter ego of a successor employer. As the successor is a

union company, nothing could be evaded by a predecessor.

C. The labor laws are applied inconsistently by all Circuits.

Because the circuits use a wide range of tests, disregard this Court's pronouncements concerning "disguised continuance," and ignore the critical question of whether any labor obligations were unlawfully avoided before imposing alter ego liability upon a nonunion company, the federal labor laws are not being enforced consistently across the country. Alter ego liability largely depends on what Circuit the employer happens to do business inside. Indeed, if the facts of the instant case were analyzed in the First, Fourth, Fifth, Seventh, Eighth, Ninth or D.C. Circuit, no alter ego liability would have been assessed. As such, this Court should grant this Petition for Writ of Certiorari to address this critical question and provide guidance to all the courts to develop consistency in the national labor laws.

In addition to the variety of tests used, courts do not know how they are to balance the factors that they are considering. Many courts using either four-factor or seven-factor tests have pronounced that all factors do not need to be present and none are controlling. *Trafford Distrib. Ctr. v. NLRB,* 478 F.3d 172 (3d Cir. 2007); *NLRB v. Allcoast Transfer, Inc.,* 780 F.2d 576, 582 (6th Cir. 1986); *Trustees of the Pension, Welfare & Vacation Fringe Benefit Funds v. Favia Elec. Co.,* 995 F.2d 785 (7th Cir. 1993), *J.M. Tanaka Constr., Inc. v. NLRB,* 675 F.2d 1029, 1033 (9th Cir. 1982); *Flynn v. R.C. Tile,* 353 F.3d 953, 958 (D.C. Cir. 2004).

Some courts claim in *dicta* that proof of intent to evade is not required, but then find such intent, making it impossible to predict whether a lack of intent to evade will preclude alter ego liability. As a result, courts reading each other's opinions are confused as to what is required to establish alter ego. For example, in *NLRB v. Scott Printing Corp.* 612 F.2d 783, 787 (3d Cir. 1979), the court did not decide whether intent to evade was required, but found that it occurred. But in *Alkire v. NLRB*, 716 F.2d 1014, 1019 (4th Cir. 1983), the Fourth Circuit concluded that in *Scott Printing Co.*, 612 F.2d 783, the Third Circuit limited the alter ego doctrine to instances of "intentional employer evasiveness." Similarly, the Sixth Circuit noted in *Allcoast Transfer*, 780 F.2d at 581, that intent is relevant but not essential in the Tenth Circuit, citing *NLRB v. Tricor Products, Inc.*, 636 F.2d 266 (10th Cir. 1980). But the *Allcoast* court recognized and disagreed with the First and Eighth Circuit's conclusion that the *Tricor* court found unlawful motive or intent to be critical to alter ego analysis. *Allcoast*, 780 F.2d at 581 n. 6 (citing *Penntech Papers, Inc. v. NLRB*, 706 F.2d 18 (1st Cir. 1983), and *Iowa Express Distrib., Inc. v. NLRB*, 739 F.2d 1305 (8th Cir. 1984)).

Many courts ignore the question of whether the union or pension fund has sustained any harm from the transaction or transfer of assets. In fact, if no fringe benefits were unlawfully evaded, no alter ego liability can result. Absent unlawful evasion, there can be no "disguised continuance" or an attempt to avoid the obligations of a collective bargaining agreement through a sham transaction or technical change in operations.

II. Courts must not use alter ego to eliminate the statutory right to terminate a collective bargaining agreement under 29 U.S.C. §158(f).

The Sixth Circuit's opinion eliminates an employer's absolute right to terminate a CBA executed under §8(f) of the National Labor Relations Act. LaSalle's now-terminated CBA was an NLRA §8(f) agreement, and not a §9(a) agreement.

> Section 9(a) of the NLRA requires that a union be selected by a majority of the employees in a bargaining unit before the union has the right to represent the employees in collective bargaining. 29 U.S.C. §159(a). Section 8(f), however, provides an exception for the building and construction industries. In these industries, an employer can enter into a §8(f) collective bargaining agreement with a union that is not supported by a majority of the unit employees. 29 U.S.C. §158(f). A union representative under a §8(f) agreement has fewer statutory rights and obligations than does a union that is party to a §9(a) agreement.

Hovey Electric, Inc. v. NLRB, 22 Fed. Appx. 509, 510 (6th Cir. 2001).

> Congress enacted Section 8(f) of the Act in recognition of special conditions that existed in the construction industry. These special conditions included the fact that employers not only needed an assurance that skilled labor would be available but needed a basis for estimating labor costs in bidding on construction contracts. Employees, on the other

> hand, were often denied the benefits of union representation because of the temporary and sporadic nature of their employment.

International Ass'n of Bridge, Structural & Ornamental Iron Workers, Local 3 v. NLRB, 843 F.2d 770, 774 (3d Cir. 1988), *cert denied,* 488 U.S. 889 (1988) (citations omitted). "Even absent an election, upon the contract's expiration, the signatory union will enjoy no majority presumption and either party may repudiate the 8(f) relationship." *James Luterbach Constr. Co.,* 315 NLRB 976, 978 (1994) (emphasis added). Employers with a §8(f) agreement have no obligation to bargain for a successor contract. *Id.* at 979.

Thus, unlike an employer governed by a §9(a) agreement, LaSalle had an absolute right to terminate its CBA. Because LaSalle lawfully exercised this right, it had no reason to attempt to unlawfully evade any labor obligations. In fact, the district court specifically found that there was no evidence of intent to evade. App. 29a. But the Sixth Circuit's decision binds LaSalle to yet another three-year CBA, despite its lawful termination of that agreement. Congress clearly intended to permit construction companies to terminate CBAs under §8(f) of the Act, but the Sixth Circuit refuses to recognize that right. The §8(f) employer can lawfully terminate its CBA without going out of business, even if the §9(a) employer cannot.

III. Courts must not be permitted to thwart the federal labor laws that permit "double-breasting."

Several circuits have a skeptical view toward "double-breasted operations," which occur where a union company establishes a second, nonunion company performing similar work in the same market with common ownership. *NLRB v. Fullerton Transfer & Storage, Inc.*, 910 F.2d 331, 336 n. 7 (6th Cir. 1990). Some courts, including the Sixth Circuit's opinion below, conclude that double-breasting is evidence of an attempt to evade the labor laws, and therefore is illegal. App. 9a-10a.

However, Congress has considered and expressly rejected amendments to the labor laws to prohibit double-breasting in the construction industry. In 1986, the House passed an amendment to the Construction Industry Labor Law Amendments of 1985, which contained language that would prohibit double-breasting or dual shops in the construction industry. H.R. 281, 99th Cong. (1986). The bill did not pass the Senate. S. 2181, 99th Cong. (1986). Similar language was introduced in the Senate in 1987, but the bill did not proceed from the committee level. S. 492, 100th Cong. (1987). In reference to H.R. 281, Senator Orin Hatch (R. Utah) explained:

> [I]t would eliminate the court sanctioned practice of commonly owned but separately managed construction entities operating without regard to each other's collective bargaining obligations. Known as dual shop operations or double-breasting, this practice normally involves one entity which is unionized

> and one which is non-union. HR 281 would destroy this legal practice.

132 Cong. Rec. S5724-01, 23 (1986).

In rejecting the anti-double-breasting amendment, Congress has indicated that double breasting is legal and does not violate the labor laws. The courts may not impose their judgment concerning what laws should be enacted when Congress has already spoken on an issue and specifically chose what to prohibit. "It is not the appropriate function of the federal courts to rewrite an act of Congress." *United States v. Youngstown Sheet & Tube Co.*, 171 F.2d 103, 111 (6th Cir. 1948). Therefore, to the extent that the Sixth Circuit's holding is based upon its view that double-breasting should be illegal, it cannot stand.

Even assuming that two entities such as LaSalle and Industrial are double-breasting (which they are not), double-breasting is not illegal, and certainly cannot be improper for a §8(f) signatory to the MRCC's CBA. It is inappropriate to impose alter ego liability upon any alleged "double-breasted" entity that terminated a construction industry §8(f) "me too" agreement. The §8(f) employer can choose whether or not to join a union. If it chooses not to remain in the union and lawfully terminates, no law prohibits it from setting up a separate union operation.

IV. The Sixth Circuit's decision ignores this Court's requirement in *Howard Johnson* and *Southport Petroleum* that a nonunion alter ego be the "disguised continuance" of a union company.

Courts of the Sixth Circuit applying the alter ego doctrine are supposed to examine the circumstances surrounding a change in corporate form to determine "whether the change resulted in a '*bona fide* discontinuance and a true change of ownership' or was merely a 'disguised continuance of the old employer.'" *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986) (quoting *Southport Petroleum Co. v. NLRB*, 315 U.S. 100, 106 (1942)). The factors relevant to a finding of alter ego include "whether the two enterprises have substantially identical management, business purpose, operation, equipment, customers, supervision and ownership." *Id.* (citations omitted). Courts are to "strike a balance among each of the criteria." *Id.* (citing *Nelson Elec. v. NLRB*, 638 F.2d 965, 968 (6th Cir. 1981)). Until the decision below, courts in the Sixth Circuit also considered whether there was any intent to evade union obligations. *Trustees of the Resilient Floor Decorators Ins. Fund v. A&M Installations, Inc.*, 395 F.3d 244 (6th Cir. 2005). *But see Yolton v. El Paso Tennessee Pipeline Co.*, 435 F.3d 571 (6th Cir. 2006).

A. The Sixth Circuit keeps shifting its alter ego standard.

In *Allcoast Transfer*, 780 F.2d at 581, the Sixth Circuit used the NLRB's seven-factor test to assess whether the NLRB properly found two entities to be alter egos. In doing so, it proclaimed that it was not

bound by any precedent from this Court or from its own Circuit concerning whether "intent to evade" is a required element for assessing alter ego. *Id.* at 579. Although it rejected employer intent to evade as a requirement for alter ego, it explained that the purpose of the doctrine was to "prevent employers from evading obligations under the Act." *Id.* at 582. Thus, lawful evasion (such as through the proper termination of a §8(f) contract) has never before resulted in alter ego liability.

A district court next considered whether a predecessor employer was responsible for the CBA obligations of a successor in *Cement Masons' Pension Trust Fund v. O'Reilly,* 664 F. Supp. 277 (E.D. Mich. 1987). In noting that "[n]o case has been cited ... where the court, on an alter ego theory, imposed liability on a predecessor ... for the debts of a successor," it also found no proof that the successor was a "disguised continuance" of the predecessor. *Id.* at 280.

Three years later, in *NLRB v. Fullerton Transfer & Storage, Inc.,* 910 F.2d 331 (6th Cir. 1990), the Sixth Circuit refused to apply the NLRB's seven-factor alter ego test to find a union and nonunion company to be alter egos when the split into the two companies occurred long before the NLRB ordered a backpay award at issue. The *Fullerton Transfer* court explained that where no union obligations were avoided at the time that the separation into two entities occurred, no corresponding benefit occurred that would trigger alter ego obligations. *Id.* at 337. It concluded that alter ego would only be applied where a corporation attempts to limit liability by thwarting

labor law obligations. *Id.* at 338. Thus, evasion of labor obligations became relevant in this Circuit.

Following the *Fullerton Transfer* reasoning, the Sixth Circuit expressly adopted the reasoning of the district court in *O'Reilly,* noting that intent to evade labor obligations is the focus of the alter ego doctrine. *Trustees of the Resilient Floor Decorators Ins. Fund v. A&M Installations, Inc.,* 395 F.3d 244, 248 (6th Cir. 2005). In considering whether double-breasted operations are prohibited by the labor laws, the *Resilient Floors* court concluded that where there is no proof that the relationship between the alleged alter egos changed or caused the union to receive less than the full benefit of its CBA, alter ego liability is inappropriate. *Id.* So despite the fact that the two companies worked on many of the same projects, had the same customers, shared office and warehouse space in the same building, shared office equipment and staff, and answered each other's phones and assisted with payroll, they were not alter egos. *Id.* at 246.

But soon afterward, a different panel of the Sixth Circuit found that common ownership or intent to evade federal labor law obligations was not necessary before finding alter ego liability. *Yolton v. El Paso Tennessee Pipeline Co.,* 435 F.3d 571, 588 (6th Cir. 2006). It avoided reaching the same conclusion as the *Fullerton Transfer* case by limiting that case to its facts. *Id.* at 587. Incredibly, even though *Resilient Floors* was decided on January 5, 2005 and *Yolton* was not argued until December 6, 2005, the *Yolton* court made no reference whatsoever to *Resilient Floors.*

Three months after *Yolton*, a district court judge, in following the reasoning of *Resilient Floors*, noted that the Sixth Circuit has "categorically rejected application of the alter ego doctrine ... where a nonunion company establishes a union company and no preexisting labor obligations are disrupted." *Cement Masons' Pension Trust-Fund v. McCarthy*, No. 04-CV-74006-DT, 2006 WL 770444, at *4 (E.D. Mich. Mar. 24, 2006). Because the union company did not conceal its close relationship with the nonunion company, the union did not receive any less than that for which it bargained. *Id.* at *5.

The Sixth Circuit below decided to follow the *Yolton* line of reasoning rather than the prior *Resilient Floors* decision. In fact, it attempted to confine the *Resilient Floors* decision to its facts. App. 13a. The two conflicting lines of reasoning continue to weave their way through the Sixth Circuit because panels in disagreement with prior panel decisions simply limit those cases to their facts, in contravention of Sixth Circuit Administrative Rule 206(c), which states:

> Reported panel opinions are binding on subsequent panels. Thus, no subsequent panel overrules a published opinion of a previous panel. Court en banc consideration is required to overrule a published opinion of the court.

6th Cir. R. 206(c). Although the Sixth Circuit appears to be confused as to whether to follow the reasoning of the reported decisions in *Resilient Floors* or *Yolton*, when given the chance to review both of these cases en banc, it declined to do so. It should not be permitted to contravene Rule 206(c) by continually "limiting to the facts" any prior decisions that a panel disagrees with.

Because two conflicting lines of reasoning continue to exist in the Sixth Circuit, this Court should grant this Petition for Writ of Certiorari in order to establish once and for all what the alter ego standard is in the Sixth Circuit and across the country.

B. Courts of the Sixth Circuit do not apply the alter ego test consistently.

Little guidance exists as to the application of the alter ego test. No court in the Sixth Circuit has specified how much weight to afford each factor, and specifically, what to do when one or more of the factors is not present. Indeed, instead of considering each factor in turn, the Sixth Circuit has declared that "no factor is controlling and all need not be present." *Yolton,* 435 F.3d at 587. Courts need guidance concerning the application of the alter ego doctrine so that they do not simply list those facts that support a finding of alter ego and ignore those facts that mitigate against it. Trial courts should be required to apply the facts to each factor in turn and then determine on balance whether the facts weigh in favor of or against a finding of disguised continuance and thus alter ego.

In the instant matter, however, the Sixth Circuit threw out the seven-factor test and established a new "mountain of evidence of intermingling" standard. Despite no factual findings concerning alter ego in the district court, the Sixth Circuit declared the two entities to be alter egos after improperly reaching its own factual findings that "the record is replete with evidence of entanglement" between the two companies. App. 13a. No court has ever analyzed the facts of this case to determine whether, on balance, the two enterprises have "substantially similar" management,

business purpose, operation, equipment, customers, supervision and ownership. Indeed, if the current decision stands, the new test for alter ego standard in the Sixth Circuit is whether there is a "mountain of evidence establishing the intermingling of the two companies" (App. 8a), with no accompanying analysis of each of the seven factors. Thus, an alter ego finding does not need to be premised on a finding of disguised continuance or sham transfer in this Circuit. Two companies in the Sixth Circuit can now be alter egos by the mere "intermingling of the two companies."

This result puts companies in greater jeopardy of being declared alter egos improperly. If the courts are to balance the seven factors, then any factor that is not present should weigh against a finding of alter ego. Unfortunately, courts in this Circuit find alter ego if a few factors are present, ignoring those factors that mitigate against alter ego status and ignoring the requirement that there be a disguised continuance or some unlawful evasion. As a result, the application of this test is patently unfair to employers, particularly as an employer can be found to be an alter ego of another absent any proof of either (1) intent to evade labor obligations, or (2) unlawful evasion.[2] Unless the courts of this Circuit "strike a balance among each of the criteria," absurd results like the instant case will result. Often no balancing of pro- and anti-alter ego facts is performed. In the instant matter, rather than returning the case to the district court to analyze the seven factors and decide whether, on balance, the two

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[2] It is undisputed that neither LaSalle nor Industrial ever evaded a single dollar of fringe benefits under their respective CBAs while they were union signatories.

entities were alter egos, the Sixth Circuit stepped into the fact-finder's shoes, abandoned the seven-factor test, ignored the lack of unlawful evasion, and found LaSalle to be Industrial's alter ego by fashioning a new alter ego standard based on a "mountain of evidence" of intermingling.

Under this new test, the entities in *Howard Johnson* would be alter egos today. The Sixth Circuit, with its new test, would find that the new ownership (Howard Johnson), which purchased a restaurant and hotel from the union entity and even hired some of the union entity's old employees, was sufficiently intermingled with the old union entity to meet the "mountain of evidence of intermingling" standard In 1974, this Court reversed the Sixth Circuit's finding of alter ego in *Howard Johnson Co. v. Detroit Local Joint Exec. Bd.*, 417 U.S. 249 (1974). In the intervening 36 years, the Sixth Circuit has been whittling away at this Court's reasoning in *Howard Johnson*, in effect abrogating that decision and blazing its own alter ego test.

C. The Sixth Circuit improperly imposes alter ego liability even absent "unlawful" evasion of labor obligations.

When the alter ego doctrine was first established in this Circuit, the Sixth Circuit properly recognized that where no union obligations were unlawfully avoided, "there is no corresponding benefit that would trigger alter ego obligations." *Fullerton Transfer*, 910 F.2d at 337. It declined to apply the alter ego doctrine absent proof that any obligations were unlawfully avoided (regardless of intent). In the instant matter, however, it ignored that requirement. It is undisputed that

LaSalle paid all pension obligations while it was a signatory, and that it properly terminated its CBA. Holding it to Industrial's subsequent CBA simply because Industrial hired some of LaSalle's laid off employees is improper.

Instead, the Sixth Circuit should be required to follow the standard set forth by this Court that a nonunion company is an "alter ego" of a union company only if the nonunion company is a "disguised continuance of the old employer," based primarily on a "mere technical change in the structure or identity of the employing entity, frequently to avoid the effect of the labor laws, without any substantial change in its ownership or management." *Howard Johnson,* 417 U.S. at 261 n. 5 (citing *Southport Petroleum Co. v. NLRB,* 315 U.S. 100, 106 (1942)). Although courts in this Circuit routinely quote this language from *Howard Johnson,* they do not actually apply it. They mechanically apply the NLRB's seven-factor test but forget to assess whether the nonunion entity is actually a "disguised continuance" of the union entity. They refuse to recognize that lawful evasion (i.e., through proper termination of a CBA) is permissible.

In the past, the Sixth Circuit attempted to follow this Court's pronouncement by also considering whether there was any evasion of preexisting labor obligations. *See Trustees of the Resilient Floor Decorators Ins. Fund v. A&M Installations, Inc.,* 395 F.3d 244 (6th Cir. 2005). In *Resilient Floors,* the Sixth Circuit stated that "'an intent to evade' preexisting obligations is 'clearly the focus of the alter ego doctrine,'" so absent "proof that the union had been short-changed ... by changes in the structure of the two entities involved in the dispute, there could be 'no

inequity that would justify a court's imposition of liability.'" *Id.* at 248 (quoting *Cement Masons' Pension Trust Fund v. O'Reilly*, 664 F. Supp. 277, 279 (E.D. Mich. 1987)).

With the current decision, unlawful evasion and the seven-factor test are no longer requirements in this Circuit. The Sixth Circuit does not consider whether the nonunion company is a "disguised continuance" of the union company "to avoid the effect of the labor laws." *Howard Johnson*, 417 U.S. at 261 n. 5. If the court had analyzed whether nonunion LaSalle was a disguised continuance of union Industrial in order to avoid labor obligations, it could not have concluded that the prior employer LaSalle, which properly terminated its CBA, was the alter ego of the subsequent employer Industrial, which signed its own CBA after LaSalle's CBA terminated. The Union and Funds are not entitled to double-dip and hold both entities liable for Industrial's labor obligations when Industrial is already meeting all of those obligations.

The district court below, following *Resilient Floors*, never reached the seven-factor test, but instead properly found that alter ego was inapplicable because there was no "evidence to show that Industrial was formed or operated with the intended purpose of evading any of LaSalle's preexisting contractual obligations." App. 29a. The district court's decision, which the Sixth Circuit reversed, is consistent with the "disguised continuance" standard.

The Sixth Circuit, however, without any factual support, reversed the question and concluded that prior employer LaSalle was the alter ego of subsequent employer Industrial. But no evidence was ever

presented that unionized Industrial sent any work to nonunion LaSalle or that LaSalle helped Industrial evade any labor obligations, so no evidence supported a finding of "disguised continuance." Instead, Industrial signed its own CBA with the MRCC and then hired LaSalle's laid-off carpenters after LaSalle terminated its CBA with the MRCC and ceased doing carpentry work.

LaSalle and Industrial did precisely what the labor laws require – one entity properly terminated its §8(f) CBA and quit doing carpentry work, and the other entity signed a union contract and hired most of the laid-off carpenters. LaSalle stopped performing carpentry work and had no labor obligations after May 31, 2003. Considering LaSalle (the prior employer of union carpenters) to be the alter ego of Industrial (the current employer of many of those same union carpenters) is the absurdity that results when courts mechanically follow the seven-factor alter ego test without considering the "disguised continuance" issue. Even the Funds agree that LaSalle and Industrial paid all requisite benefits under their respective CBAs. If Industrial had never signed its CBA after LaSalle's proper termination, neither company would have been sued. Industrial's execution of the CBA gave the union more than it was entitled to absent Industrial's signature. Under these circumstances, a finding of alter ego status is improper.

D. The Sixth Circuit's decision will have a chilling effect on union construction companies.

With the Sixth Circuit's new holding, nonunion companies stand in jeopardy of being found alter egos

of union companies if they sell assets to union companies, if a number of their employees leave to work for union companies, or if they close down a wing of their business and their employees are hired by an entity that later signs a union contract. No labor interest is served by this absurd result. In fact, to the contrary, nonunion companies will have to avoid doing business with union companies in the future (including sending work to union companies) in order to avoid the new "evidence of entanglement" standard. This result thwarts the interest of the labor laws as it discourages nonunion businesses from lawful interactions with union companies. Unions, their members, and pension funds will suffer as a result.

E. The Sixth Circuit erroneously reached a factual conclusion that prior employer LaSalle was the alter ego of new employer Industrial, even though LaSalle could not be a "disguised continuance" of the successor employer.

The determination of alter ego status is a question of fact that is reversible only if clearly erroneous. *NLRB v. Allcoast Transfer, Inc.*, 780 F.2d 576, 579 (6th Cir. 1986). The district court below concluded that alter ego was inapplicable because there was no evidence of any intent to evade preexisting labor obligations, and it never reached any findings of fact concerning alter ego. App. 29a. The Sixth Circuit then improperly took on the role of fact-finder and, based on "the documentary nature of plaintiffs' proof," erroneously concluded that prior employer LaSalle was Industrial's alter ego. App. 13a. A reviewing court is not permitted to "duplicate the role of the lower court" and reach its own findings of fact, "even when the

district court's findings do not rest on credibility determinations, but are based instead on physical or documentary evidence or inferences from other facts." *Anderson v. Bessemer City,* 470 U.S. 564, 573 (1985). The Sixth Circuit should have remanded the alter ego fact question to the district court once it decided that intent to evade was no longer a prerequisite to alter ego in this Circuit.

The Sixth Circuit made the erroneous factual finding that LaSalle, the old union employer that properly terminated its CBA, was the alter ego of the new employer Industrial, which did not sign a CBA or hire LaSalle's former employees until after LaSalle terminated. App. 13a-14a. The Funds concede that LaSalle had the right to terminate its NLRA §8(f) CBA with the MRCC and that such termination was proper and effective one day before Industrial's CBA went into effect. RE.45-8:p.3. But an old employer cannot logically be a "disguised continuance" of a new employer. Even if a "change in corporate form" of the union entity could be considered a "disguised continuance of the old employer," *Southport Petroleum Co. v. NLRB,* 315 U.S. 100, 106 (1942), the correct conclusion would have been to find Industrial the alter ego of LaSalle and subject to LaSalle's (now properly terminated) CBA, not vice versa. But because Industrial signed its own CBA and hired many of the same union carpenters, the union and Funds continued to receive all the same benefits they received under LaSalle's properly terminated CBA. They are not entitled to anything further.

CONCLUSION

For the reasons set forth above, Petitioner respectfully requests the issuance of a writ of certiorari to the United States Court of Appeals for the Sixth Circuit.

Respectfully submitted,

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